

## **EXHIBIT 4**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: )  
 ) CHAPTER 11  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P., ) CASE NO. 19-34054-SGJ11  
 )  
Reorganized Debtor. )

REMOTE ORAL DEPOSITION OF  
BARKER VIGATTO LLP

BY AND THROUGH ITS DESIGNATED REPRESENTATIVE

MARK BARKER

Dallas, Texas

Friday, August 5, 2022

REPORTED REMOTELY BY:

JANICE K. McMORAN, CSR, RDR, CRR, TCRR

JOB NO. 215016

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1 BARKER VIGGATO LLP - M. BARKER  
2 that, will you let me know?  
3 A. Yes.  
4 Q. There's a court reporter here,  
5 Janice, who is transcribing everything we say.  
6 Every word that we say is going to be  
7 accurately transcribed on a page. So it's very  
8 important that all of your answers be verbal  
9 answers and not nods of the head or anything  
10 like that. Is that okay?  
11 A. Yes.  
12 Q. Okay. From time to time, I'm going  
13 to share documents with you. We're going to  
14 put them on the screen, we're going to put them  
15 in the chat room. This is not a test. This is  
16 not a memory test. I'm not playing got you.  
17 If I show you a document and you think that  
18 there's another piece of it that you may want  
19 to see in order to either refresh your  
20 recollection or to put in context the question  
21 that I'm asking you, please, I encourage you to  
22 do that. Is that okay?  
23 A. Yes.  
24 Q. Okay. If you need a break at any  
25 time, let me know and I'll be happy to

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1 BARKER VIGGATO LLP - M. BARKER  
2 Q. And do you understand that this is  
3 the subpoena that Highland Capital Management,  
4 L.P. served on Barker Viggato?  
5 A. Yes.  
6 Q. Okay. And if we can scroll down to  
7 the topics. Do you understand, sir, that  
8 you're here today to testify as the  
9 representative of Barker Viggato?  
10 A. Yes.  
11 Q. Okay. And have you seen the topics  
12 that are set forth on this page that are on the  
13 screen?  
14 A. Yes, I have.  
15 Q. And are you prepared to testify on  
16 behalf of Barker Viggato with respect to the  
17 topics that are listed on the screen?  
18 A. Yes.  
19 Q. Did you do anything to prepare for  
20 today's deposition?  
21 A. Well, I gathered the requested  
22 documents that y'all had requested in your  
23 request, and so went through and assembled  
24 those documents, provided them to my attorney,  
25 Matthew Roberts, which then he, in turn,

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1 BARKER VIGGATO LLP - M. BARKER  
2 accommodate you. I just ask that you not  
3 request a break while a question is pending,  
4 okay?  
5 A. Okay.  
6 Q. From time to time, a lawyer may  
7 object to a question. And that's just kind of  
8 lawyer stuff that's going back and forth, and  
9 then I'm going to have to make a decision about  
10 what to do. Let us do our job, and, you know,  
11 unless your lawyer instructs you not to answer,  
12 you know, I'll just ask you to answer the  
13 question, okay?  
14 A. Okay.  
15 (Exhibit 1 marked.)  
16 Q. I'm going to put up on the screen --  
17 so I've got my legal assistant, La Asia Canty,  
18 with me, and I'm going ask La Asia to put up  
19 the screen the first exhibit, which is the  
20 subpoena that was served on Barker Viggato.  
21 So this give you a sense of how the  
22 process will work. We can only put up a  
23 portion of a page at a time, but this is --  
24 have you seen this document before, sir?  
25 A. Yes. Yes, I have.

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1 BARKER VIGGATO LLP - M. BARKER  
2 provided to you and your team, and then I  
3 reviewed the LLC agreement and passed through,  
4 you know, some of the other information just to  
5 refresh my memory on the, you know, various  
6 documents.  
7 Q. Okay. I want to thank you, sir, for  
8 your efforts and for your lawyer's efforts.  
9 You are a third-party witness here. While you  
10 have an obligation to comply with the subpoena,  
11 I do appreciate the meticulous way that it  
12 appears you and your counsel went about it. So  
13 I just -- I just wanted to thank you.  
14 Other than the LLC agreement, do you  
15 remember with any specificity any of the  
16 documents that you reviewed to prepare yourself  
17 for today's deposition?  
18 A. I also went back through some of the  
19 old e-mails that were provided as part of the  
20 documentation. And I also -- I'll say I passed  
21 through the tax returns from 2018, 2019 and  
22 2020. And, you know, other than  
23 refamiliarizing myself with those sets of  
24 documents, that's really what I did to prepare  
25 for today's meeting.

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. Okay. Did you review any documents

3 that weren't produced in response to the

4 subpoena?

5 A. No.

6 Q. Okay. Did you speak with any

7 individuals other than Mr. Roberts in

8 connection with your preparation for today's

9 testimony?

10 A. Yes. I also spoke to one of my staff

11 people, Ross Kirshner, who assisted me in the

12 preparation of the tax return. And then he, in

13 turn -- we also spoke to Kristin Martin, who is

14 also one of my staff people as well.

15 Q. Can I refer to Barker Viggato as BV?

16 A. You may.

17 Q. Okay. And you're familiar with the

18 entity SE Multifamily Holdings, LLC? Do I have

19 that right?

20 A. Yes, you have that right.

21 Q. Can I refer to that entity as either

22 SEM or SE Multifamily?

23 A. You may.

24 Q. Has BV prepared the tax returns for

25 SEM?

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1 BARKER VIGGATO LLP - M. BARKER

2 perspective.

3 A. Okay. That has been historically

4 HCRE, now known as NexPoint.

5 Q. And when you use the phrase HCRE, are

6 you referring to the entity that was previously

7 known as HCRE Partners, LCC?

8 A. Yes.

9 Q. And is it your understanding that

10 that firm was renamed as NexPoint Real Estate,

11 LLC or Real Estate Advisors, LCC?

12 A. Yes.

13 Q. Okay. I'm just going to refer to

14 that entity as HCRE for purposes of this

15 deposition. Is that okay?

16 A. Yes.

17 Q. Okay. Have you or anybody at BV

18 spoken with anybody at HCRE in connection with

19 today's deposition?

20 A. I have. I spoke to Paul Broaddus

21 just to inform him that I had been served this

22 deposition.

23 Q. And when did you have that

24 conversation with Mr. Broaddus?

25 A. It was shortly after the deposition

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1 BARKER VIGGATO LLP - M. BARKER

2 A. We have prepared the 2018, 2019, and

3 2020 tax returns.

4 Q. Will BV be preparing the tax returns

5 for 2021 for SEM?

6 A. To be determined.

7 Q. Have there been any discussions yet

8 about whether BV would provide services in

9 connection with SE Multifamily's 2021 tax

10 returns?

11 A. They have sent us the financials, but

12 at this point no further discussions have been

13 had regarding the preparation of the 2021 tax

14 return.

15 Q. Do you know whether SE Multifamily

16 got an extension until September 15th, 2022 to

17 file its 2021 tax returns?

18 A. Yes. We did file an extension for

19 them.

20 Q. Do you know who the manager of SE

21 Multifamily is?

22 A. When you say "the manager," are you

23 talking about from the LLC's perspective or

24 from internal, who provides our information?

25 Q. Let's start with from the LLC

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1 BARKER VIGGATO LLP - M. BARKER

2 was served. So I want to say, gosh -- I want

3 to say that was early July.

4 Q. Do you recall anything about your

5 discussion with Mr. Broaddus other than

6 informing him that BV had been served with the

7 subpoena?

8 A. No.

9 Q. Did he say anything to you in

10 response?

11 A. No, not really, other than he at one

12 point, I guess, had been served as well.

13 Q. What is BV?

14 A. It's an accounting firm.

15 Q. And how long has it been in business?

16 A. Since fall of 2004.

17 Q. And is BV aware that HCRE is

18 controlled by a gentleman named James Dondero?

19 A. I was not -- I don't know what the

20 exact ownership is and who controls who.

21 Q. Is BV aware that -- withdrawn.

22 BV is aware that HCRE and Highland

23 Capital Management, L.P. are two members in SE

24 Multifamily, correct?

25 A. Correct.

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. And I'm going to refer to Highland

3 Capital Management, L.P. going forward as HCMLP

4 if I can. Will you understand that I'm

5 referring to that entity?

6 A. Yes.

7 Q. Okay. Is BV aware of any affiliation

8 or relationship between HCRE and HCMLP at the

9 time the SE Multifamily amended and restated

10 agreement was entered into in March of 2019?

11 A. From my knowledge, they were related

12 parties. I don't know exactly what the

13 ownership structure was upstream and what the

14 exact nature of the relationship was. But my

15 understanding is they were, I guess, related

16 business partners.

17 Q. Are you familiar with the entity

18 that's referred to sometime as Liberty?

19 A. Only in the context of the fact that

20 they were a member of SE Multifamily.

21 Q. Does BV have any reason to believe

22 that Liberty was also related to HCMLP and

23 HCRE?

24 A. No.

25 Q. Do you -- what's the basis for BV's

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1 BARKER VIGGATO LLP - M. BARKER

2 A. John, I don't know the exact time

3 frame. It could be four or five years.

4 Q. So was it -- was it before BV began

5 providing tax services to SE Multifamily?

6 A. Yes.

7 Q. Okay. And is BV continuing to

8 provide services to the DST vehicles as of

9 today?

10 A. Yes.

11 Q. Does BV have a primary contact for

12 purposes of the preparation of SE Multifamily's

13 tax returns?

14 A. Yes.

15 Q. And who is the primary contact at the

16 client?

17 A. Oh, the contact with the client?

18 Q. Yes.

19 A. Is Paul Broaddus.

20 Q. And has Mr. Broaddus been the primary

21 contact for BV since the time SE Multifamily

22 was created?

23 A. Yes.

24 Q. Is there anybody else with whom BV

25 regularly communicates in connection with the

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1 BARKER VIGGATO LLP - M. BARKER

2 understanding that HCRE and HCMLP were related?

3 A. It is my understanding they basically

4 share an office space, and I guess just from

5 observing over the course of time, that

6 people's e-mail tag lines seemed to change

7 between HCMLP and HCRE or NexPoint.

8 Q. Do you know whether HCRE has ever had

9 any employees?

10 A. Pardon me? I didn't hear you.

11 Q. Do you know whether HCRE has ever had

12 any employees?

13 A. No.

14 Q. Has BV ever provided any services to

15 any entity that it believed was related to HCRE

16 or HCMLP other than SE Multifamily?

17 A. Yes, we have.

18 Q. Can you identify the entities to

19 which BV provided services?

20 A. There are a number of I'll call them

21 Delaware Statutory Trust vehicles in which we

22 prepare the investor reporting and the grantor

23 tax returns for those DST entities.

24 Q. And how long has BV been providing

25 services to those DST vehicles?

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1 BARKER VIGGATO LLP - M. BARKER

2 preparation of SE Multifamily's tax returns?

3 A. We have also communicated with the --

4 I'll call it the BH Equities entity.

5 Q. And is BH Equities a member of SE

6 Multifamily, to the best of your knowledge?

7 A. Yes, to the best of my knowledge.

8 Q. Is there a process that BV follows

9 with respect to the preparation of

10 SE Multifamily's tax returns?

11 A. Yes. We will usually get the

12 financials from the client, and we then take

13 those financials that are prepared, more or

14 less, on a book or GAAP basis and we will take

15 those financials and adjust them so that we are

16 reporting the information for federal tax

17 purposes consistent with the Code and

18 regulations of the Internal Revenue Code.

19 And once we've, I guess, made the

20 financials such that they are conforming to the

21 provisions of the Internal Revenue Code, we

22 then enter them into a software program. The

23 software program is what generates the tax

24 return and the related K-1s.

25 And then once the federal tax return

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1 BARKER VIGGATO LLP - M. BARKER  
2 is completed, we will complete the state tax  
3 returns in which it operates.  
4 Q. Has the process you just described  
5 ever changed since the time BV began providing  
6 tax services to SE Multifamily?  
7 A. No, not in any material respect.  
8 Q. Does that process differ in any  
9 material respect from the process BV uses to  
10 prepare tax returns for others -- other clients  
11 of theirs?  
12 A. No. That's very consistent.  
13 Q. Does BV rely on the manager to  
14 provide the information that's necessary for  
15 the preparation of SE Multifamily's tax  
16 returns?  
17 A. The initial financial statements are  
18 usually provided by BH Equities, as they are  
19 the -- as I understand it, the third party that  
20 was engaged to prepare the property operating  
21 statements and consolidate them. And --  
22 Q. Does -- I'm sorry.  
23 A. And then someone from the HCRE/HCMLP  
24 shop would then get involved and look at the  
25 financials from sort of a consolidating

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1 BARKER VIGGATO LLP - M. BARKER  
2 allocations of income reflected in the tax  
3 returns.  
4 Q. Okay. So I just want to make sure I  
5 have this right, that BV relies upon HCRE to  
6 make sure that the contributions of the  
7 members, the distributions to the members, and  
8 the allocation of SE Multifamily's profits and  
9 losses are accurate. Do I have that right?  
10 A. Yes.  
11 MR. MORRIS: If we could scroll up,  
12 La Asia, to the page before this, the  
13 document requests. Do you see -- stop  
14 there.  
15 BY MR. MORRIS:  
16 Q. You see that request number 6 asks  
17 for documents concerning any statement,  
18 suggestion, assertion, or allegation made at  
19 any time by HCRE that there was any error in  
20 the amended LLC agreement? Do you see that  
21 request?  
22 A. Yes, I do.  
23 Q. BV has no documents or communications  
24 responsive to that request. Do I have that  
25 right?

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1 BARKER VIGGATO LLP - M. BARKER  
2 standpoint and just high-level review to make  
3 sure that they were consistent with their  
4 understanding.  
5 Q. So is it BV's understanding that  
6 BH Equities is the party responsible for the  
7 maintenance of SE Multifamily's financial  
8 statements?  
9 A. Well, I would say they're responsible  
10 for the day-to-day maintenance of reporting the  
11 debits and credits from the operating  
12 activities of the properties, but I view it as  
13 HCMLP and HCRE are the ultimate responsible  
14 parties for the consolidated financial  
15 statements.  
16 Q. Does BV receive any information from  
17 HCRE or HCMLP that it relies upon to prepare  
18 its tax -- SE Multifamily's tax returns?  
19 A. Yes.  
20 Q. Can you describe for me what  
21 information BV receives and relies upon that it  
22 gets from either HCRE or HCMLP?  
23 A. We would make sure that they were in  
24 agreement with the partner contributions and  
25 the partner distributions, as well as the

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1 BARKER VIGGATO LLP - M. BARKER  
2 A. You have that right. Along those  
3 lines is that in the preparation of the 2020  
4 tax return, we were, I guess, verbally informed  
5 and then provided a footnote that was to be  
6 attached to the 2020 tax return. That footnote  
7 is known as -- I guess really it's Statement 1  
8 that was attached to the 2020 tax return  
9 that -- again, it was drafted by -- I'm not  
10 sure who drafted it, but it was legal counsel  
11 for either HCRE or HCMLP.  
12 And I guess you're probably familiar  
13 with that footnote, but I do want to point that  
14 out. That could be a -- I guess an indication  
15 that perhaps there was, I guess, alternative  
16 thoughts regarding, you know, what the economic  
17 ownership was.  
18 Q. Okay. And -- I'm sorry, I may have  
19 violated one of my early rules. Are you  
20 finished with your answer?  
21 A. Yes.  
22 Q. Okay. The footnote that you just  
23 referenced, that would be a footnote to the  
24 2020 tax returns, right?  
25 A. Right.

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. And the 2020 tax returns for

3 SE Multifamily were prepared in September 2021,

4 correct?

5 A. Correct.

6 Q. And it was in September of 2021 that

7 BV was informed for the first time of the issue

8 that's described in what ultimately became the

9 footnote; is that fair?

10 A. That's fair.

11 Q. Okay. We'll talk about that in more

12 detail in a moment.

13 MR. MORRIS: La Asia, just so you

14 know, I am going to skip over what has

15 been marked as Exhibit 2. So that's just

16 blank.

17 (Exhibit 3 marked.)

18 BY MR. MORRIS:

19 Q. But let's spend a few minutes, if we

20 can, just looking at the amended agreement,

21 which we've premarked as Exhibit 3.

22 And so I believe the amended and

23 restated LLC agreement is a document,

24 Mr. Barker, that you mentioned you had reviewed

25 to prepare for today's deposition. Do I have

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. And at the time that you received the

3 agreement, do you recall if it was already

4 executed?

5 A. It was not. Well, I'll say this.

6 The agreement that we -- the amended agreement

7 that we first received back in that time frame

8 had not been -- well, the copy we received was

9 not executed.

10 Q. Do you see that this agreement is

11 dated as of March 15, 2019?

12 A. Right.

13 Q. Do you recall how far before

14 March 15th BV received the unsigned agreement

15 that you described?

16 A. No, I don't.

17 Q. And other than receiving the unsigned

18 agreement from Mr. Broaddus in March of 2019,

19 did -- did you have any substantive comments

20 with Mr. Broaddus about the terms or conditions

21 in the amended agreement?

22 A. No.

23 Q. Did you give any advice that the

24 agreement had to be signed by March 15th in

25 order for it to be retroactive to August 23rd,

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1 BARKER VIGGATO LLP - M. BARKER

2 that right?

3 A. You have that right.

4 Q. Okay. Did BV provide any advice to

5 anybody in connection with the drafting or

6 preparation of this document?

7 A. No.

8 Q. I'm going to refer to the First

9 Amended and Restated Limited Liability Company

10 Agreement for SE Multifamily Holdings LLC as

11 the amended agreement. Is that okay?

12 A. That's fine.

13 Q. Did BV have -- withdrawn.

14 Do you recall when BV first learned

15 of the existence of the amended agreement?

16 A. It was, if I recall correctly, in

17 March of 2019.

18 Q. And do you remember the circumstances

19 around how BV learned of the amended agreement?

20 A. We were contacted by a representative

21 of, at the time, HCMLP, Paul Broaddus, and he

22 had requested that we assist with the

23 preparation of the tax return for

24 SE Multifamily, and at that point in time

25 provided a copy of the amended agreement.

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1 BARKER VIGGATO LLP - M. BARKER

2 2018?

3 A. No, I did not provide that advice.

4 Q. You mentioned that you believed that

5 Mr. Broaddus was acting on behalf of HCMLP. Do

6 I have that right?

7 A. Right.

8 Q. How do you know if he was acting on

9 behalf of HCMLP or HCRE?

10 A. Well, from reviewing the e-mails at

11 that point in time, if you looked at the tag

12 line in his e-mail, it indicates that he is,

13 you know, with HCMLP.

14 Q. Right. Other than his e-mail

15 address, do you have any basis for believing

16 that he was representing either HCRE or HCMLP

17 or representing both entities?

18 A. To me, he was representing both

19 entities.

20 Q. To you.

21 A. Yes.

22 Q. And why did you believe that he was

23 representing both entities?

24 A. Well, because I knew there was some

25 relation between the two parties, they shared



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1 BARKER VIGGATO LLP - M. BARKER  
2 office space, and he had indicated in a verbal  
3 conversation that the agreement was drafted in  
4 a way such that the allocations would provide  
5 flexibility between HCRE and HCMLP.  
6 Q. Is that a common -- have you seen  
7 that feature before where you have the  
8 flexibility that you just referred to?  
9 A. I would say it's -- you know, it  
10 happens, you know.  
11 Q. Well, when you -- I'm sorry. Are you  
12 finished with your answer?  
13 A. Yes.  
14 Q. What flexibility are you referring  
15 to?  
16 A. The flexibility regarding  
17 allocations.  
18 Q. Allocations of what?  
19 A. Income. Income or loss.  
20 Q. So it's your understanding that this  
21 agreement provided flexibility to adjust the  
22 allocation of SE Multifamily's profits and  
23 losses between the members?  
24 A. Yes.  
25 Q. And was it just between HCRE and

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1 BARKER VIGGATO LLP - M. BARKER  
2 that's kind of the concept of Subchapter K in  
3 the Internal Revenue Code is that partnerships  
4 and their related partners have some  
5 flexibility to, I guess, determine their  
6 allocations amongst themselves.  
7 Q. Okay. Is this document a document  
8 that was relevant to BV's work in connection  
9 with the preparation of SE Multifamily's tax  
10 returns?  
11 A. When you say "document," are you  
12 referring to the amended agreement?  
13 Q. Yes, I am.  
14 A. Okay. Well, yeah, no, it was  
15 relevant to our preparation of the tax return.  
16 Q. And did BV rely upon the amended  
17 agreement to prepare SE Multifamily's tax  
18 returns?  
19 A. Well, we relied both on the agreement  
20 as well as e-mail and verbal conversations that  
21 we had with our client.  
22 Q. Is BV aware of any written amendment  
23 or modification to this amended agreement?  
24 A. No.  
25 Q. So BV has never been presented with a

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1 BARKER VIGGATO LLP - M. BARKER  
2 HCMLP, or was it between and among all of the  
3 members?  
4 A. Effectively, I think it was between  
5 HCMLP, HCRE, and BH Equities.  
6 Q. Do you know what factors are  
7 considered in deciding how to allocate  
8 SE Multifamily's profits and losses among the  
9 members?  
10 A. I'm not sure I understand your  
11 question. When you say "factors," can you be a  
12 little more specific?  
13 Q. Sure. You said that there's  
14 flexibility in that the profits and losses  
15 could be allocated between and among the  
16 members. Is it in any fashion that the members  
17 decide?  
18 A. Well, I don't know that it's in any  
19 fashion, but under the Internal Revenue Code,  
20 partners do have leeway to share allocations as  
21 they determine.  
22 Now, there are certain, I guess,  
23 regulatory allocations that can impact losses  
24 and how income or loss would be allocated under  
25 those regulatory allocations. But generally,

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1 BARKER VIGGATO LLP - M. BARKER  
2 written amendment or modification to the  
3 amended agreement, correct?  
4 A. Correct.  
5 MR. MORRIS: Okay. Can we scroll  
6 down to Section 1.7?  
7 BY MR. MORRIS:  
8 Q. Do you see here, sir, that Section  
9 1.7 addresses company ownership?  
10 A. Yes.  
11 Q. And do you see that each of the  
12 members of SE Multifamily is identified and  
13 their respective ownership interests are stated  
14 in Section 1.7?  
15 A. Yes.  
16 Q. Is this section relevant to any of  
17 the work that BV did in preparing  
18 SE Multifamily's tax returns?  
19 A. Well, the -- this paragraph here,  
20 1.7, addresses company ownership. There's  
21 another paragraph -- I don't remember the  
22 paragraph number off the top of my head -- that  
23 addresses how allocations of income would be  
24 shared. And so that was a little -- to me  
25 that's more relevant as to how the allocations



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1 BARKER VIGGATO LLP - M. BARKER  
2 will be shared.  
3 Q. And do you know if the allocations  
4 are shared consistent with the percentage  
5 interests of company ownership?  
6 A. They are not.  
7 Q. Okay. Let's take a look -- when you  
8 talk about allocation, are you talking about  
9 allocation of profits and losses or are you  
10 talking about distributable cash?  
11 A. No, I'm talking about allocations of  
12 profits or losses.  
13 Q. Okay. But on the K-1, the K-1 does  
14 identify the ownership, the capital interests  
15 of each member in the enterprise, correct?  
16 A. It does.  
17 Q. And would Section 1.7 be the portion  
18 of the -- or one portion of the amended  
19 agreement that BV relies upon to prepare that  
20 portion of the K-1s?  
21 A. Yes.  
22 Q. Okay.  
23 MR. MORRIS: Can we go to -- let's  
24 just go to Schedule -- actually, we'll do  
25 it in order. Let's go to Section 6.1,

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1 BARKER VIGGATO LLP - M. BARKER  
2 that is a different question. The manager  
3 decides what to do in the manager's own  
4 discretion, right?  
5 A. Right.  
6 Q. Okay. So is it BV's job to determine  
7 whether or not the manager is following the  
8 waterfall set forth in Section 6.1?  
9 A. No, it's not -- I mean, I guess it's  
10 not BV's responsibility to say, well, the  
11 agreement says X, you distributed cash under  
12 some different provision. I'm going to rely on  
13 a -- what I would consider a very sophisticated  
14 client to determine its own allocations since  
15 they have specifically said that this  
16 agreement, as a whole, was drafted in order to  
17 provide flexibility between the partners as to  
18 how they determine allocations of income or  
19 loss and I guess also how they distributed  
20 cash.  
21 Q. Okay. Do you believe that HCRE is a  
22 sophisticated client?  
23 A. I didn't hear that. What?  
24 Q. Do you believe -- from BV's  
25 perspective, is HCRE a sophisticated client?

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1 BARKER VIGGATO LLP - M. BARKER  
2 please.  
3 BY MR. MORRIS:  
4 Q. And are you familiar with Section 6.1  
5 of the agreement? And we can scroll down, if  
6 you'd like, to look at more.  
7 A. Yes, I'm familiar with this  
8 provision, yes.  
9 Q. Do you understand this is the  
10 waterfall for distributions?  
11 A. Yes.  
12 Q. And it sets forth the order in which,  
13 you know, claims and debts and obligations must  
14 be satisfied before cash is distributed to the  
15 equity holders; is that fair?  
16 A. Well, I think that's fair, but it is  
17 the client that ultimately has determined what  
18 was distributed, when it was distributed, and  
19 to whom it was distributed.  
20 Q. And whether or not -- that's right,  
21 but -- but is it your understanding that  
22 Section 6.1 is the parties' agreement on how  
23 that's supposed to happen?  
24 A. Yes.  
25 Q. Whether or not the manager followed

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1 BARKER VIGGATO LLP - M. BARKER  
2 A. Yes.  
3 Q. Do you think that they pay attention  
4 to details?  
5 A. Yes.  
6 Q. Do you think that they understand the  
7 agreements that they sign?  
8 A. I think that's a question for HCRE.  
9 Q. Do you have any reason to believe  
10 that HCRE didn't understand this agreement at  
11 the time it signed it?  
12 A. No. I don't have a reason to believe  
13 they didn't.  
14 Q. Okay. Nobody acting on behalf of  
15 HCRE has ever informed BV that it didn't  
16 understand the amended agreement at the time it  
17 signed it, correct?  
18 A. Correct.  
19 Q. And if you look at Section 6.1(a),  
20 that sets forth how distributable cash will be  
21 distributed among the members of  
22 SE Multifamily, correct?  
23 A. Well, I think that's one part of it.  
24 I think you have to look at Section 6.1 as a  
25 whole and not just look at 6.1(a).

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2 lender on behalf of such member to pay  
3 principal and interest on loan -- any loan  
4 incurred by such member to fund such member's  
5 capital contributions.  
6 Q. So what do you understand that to  
7 mean?  
8 A. Well, I'm just saying that that's  
9 a -- it's part of the whole overall view of  
10 distributions.  
11 Q. Okay.  
12 A. So I think -- again, I don't know how  
13 else to say it. I think you have to look at  
14 6.1(a) in totality, and whether (e) was germane  
15 or not, I cannot say. I'm just saying that  
16 provision is there, and to me the way it's  
17 there, you don't necessarily fall squarely  
18 under 6.1(a).  
19 Q. You know what, I don't mean to  
20 quarrel with you at all, sir. Let me try it  
21 this way. You understand that Section 6.1 is  
22 the agreement relating to the waterfall?  
23 A. We'll agree with that, yeah.  
24 Q. And would you agree that when we use  
25 the phrase "waterfall," we're talking about the

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1 BARKER VIGGATO LLP - M. BARKER  
2 distributable cash has to be allocated and  
3 distributed to its members in accordance with  
4 the percentages set forth in 6.1(a)?  
5 A. Well, that is what is drafted in this  
6 agreement.  
7 Q. Okay.  
8 A. Now, I will say that, again, it's my  
9 understanding that there was a -- I'll call it  
10 a related party relationship between HCMLP and  
11 HCRE/NexPoint that allowed them to make  
12 determinations of how cash was to be  
13 distributed.  
14 Q. Can you point to something in the  
15 document that would allow a deviation from  
16 Section 6.1(a) when the manager was going to  
17 make distributions in accordance with that  
18 section? Where is the flexibility for that?  
19 A. It's not -- perhaps it's not drafted  
20 in this agreement, but, again, I go back to  
21 initial conversations that I had with -- with  
22 Paul that said, look, we've drafted this  
23 agreement, but it was drafted in such a manner  
24 to allow flexibility regarding the economics of  
25 the partners.

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1 BARKER VIGGATO LLP - M. BARKER  
2 order in which cash is distributed from  
3 SE Multifamily to its members?  
4 A. Right. But, again, you have to  
5 consider the totality of Section 6.1.  
6 Q. I'm trying to do exactly that. 6.1  
7 contains a waterfall, right?  
8 A. Yes.  
9 Q. And it tells the members the order of  
10 priority in which cash is going to be  
11 distributed before it gets to the next level of  
12 the waterfall. Fair?  
13 A. Right.  
14 Q. And we don't have to debate about  
15 what the levels are. At some point cash might  
16 be distributed pursuant to Section 6.1(a),  
17 correct?  
18 A. Right. Or it could be distributed or  
19 deemed distributed under 6.1(e).  
20 Q. Correct. But -- but 6.1(e) has to be  
21 completed before you get to 6.1(a), right?  
22 That's why it says notwithstanding?  
23 A. Right.  
24 Q. Okay. So at some point in time, if  
25 you get to 6.1(a), would you agree that the

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1 BARKER VIGGATO LLP - M. BARKER  
2 Q. In your professional opinion, are the  
3 parties to this agreement allowed to rely on  
4 the terms set forth therein?  
5 A. Yes. I mean, it's --  
6 Q. Did Mr. Broadus ever point to you  
7 any provision in the agreement that would allow  
8 him to distribute cash in a manner inconsistent  
9 with Section 6.1(a)?  
10 A. Well, I was never consulted in any  
11 form or fashion regarding how the cash was  
12 distributed. I was provided a financial  
13 statement, and that financial statement said,  
14 all right, capital contributions were X,  
15 capital distributions were Y, and the  
16 distributions were distributed to each partner  
17 in a specified amount. I was never consulted  
18 in any way regarding how those distributions  
19 were made.  
20 Q. Do you have -- does Barker Viggato  
21 have a view as to whether or not the manager  
22 complied with the agreement when making  
23 distributions of cash?  
24 A. No.  
25 Q. Has Barker Viggato done any work to

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1 BARKER VIGGATO LLP - M. BARKER

2 determine whether or not the manager complied

3 with the agreement when it distributed cash?

4 A. I'm going to -- I keep going back to

5 the same statements that were made early on at

6 the initiation of this vehicle, that it was

7 drafted in a format such that the partners had

8 leeway to determine allocations amongst

9 themselves.

10 Q. I understand that that's what you

11 were told. I'm asking you whether Barker

12 Viggato has formed any opinion as to whether

13 the manager distributed cash consistently with

14 this signed document.

15 A. Again, I don't know that I -- Barker

16 Viggato has, quote/unquote, formed an opinion

17 regarding whether or not the parties were, I

18 guess, distributing cash based on the exact

19 provisions in this agreement.

20 Q. Okay. And you can't point me to any

21 provision in the agreement that gives the

22 manager the flexibility to distribute the cash

23 in any manner that it sees fit, correct?

24 A. Correct.

25 Q. And while Mr. Broaddus may have told

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2 allocate the income between BH Equities and

3 HCMLP based on that concept. And that would be

4 a direction again from Paul.

5 And then in 2019, the allocations

6 were done on the 94/6 relationship. And then

7 in 2020 we were specifically directed to

8 allocate all of the income to HCRE with the

9 exception of -- well, let me back up just a

10 tad.

11 Liberty CLO had a preferred interest.

12 And so to the extent cash was distributed to

13 them on their preferred interest, they would

14 get a corresponding allocation of income.

15 So outside of that, though, the

16 allocations were as I specified.

17 Q. What's the purpose -- do you have a

18 view as to whether or not -- withdrawn.

19 The members' agreement with respect

20 to allocation of profits and losses is set

21 forth in Section 6.4. Would you agree with

22 that?

23 A. Yes.

24 Q. And Section 6.4(a) specifically says

25 that unless set forth in other sections,

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2 you that he believed the agreement gave him

3 flexibility, he didn't show you or cite to you

4 or identify any provision in this agreement

5 that would give him that flexibility, correct?

6 A. Correct.

7 MR. MORRIS: Let's go Section 6.4.

8 BY MR. MORRIS:

9 Q. Do you see Section 6.4 addresses

10 allocations of profits and losses?

11 A. Yes.

12 Q. And do you see that it specifically

13 says that except as provided in Section 6.4 and

14 after special allocations described in Section

15 6.4(a), that profits and losses would be

16 allocated 94 percent to HCMLP and 6 percent to

17 BH Equities?

18 A. Yes.

19 Q. Okay. Is that a provision that BV

20 relied upon in preparing SE Multifamily's tax

21 returns?

22 A. Well, in the 2018 tax year, we were

23 told that the allocations between HCMLP and BH

24 would be done on a pro-rata basis so that, in

25 essence, you would come up with a ratio to

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2 profits and losses should be allocated 94

3 percent to HCMLP and 6 percent to BH Equities,

4 correct?

5 A. Correct.

6 Q. But in 2018 and 2020, profits and

7 losses were allocated in a different manner,

8 correct?

9 A. Yes.

10 Q. And you've described for me generally

11 how that allocation differed in those years,

12 right?

13 A. Right.

14 Q. Did you have any discussion with HCRE

15 or anybody as to what the basis was for

16 deviating from the allocations set forth in

17 Section 6.4(a) in 2018?

18 A. Well, I mean, again, we were directed

19 by Paul, who to me was a representative of both

20 HCMLP and HCRE, that that's how they wanted the

21 allocations completed in 2018. And in the

22 grand scheme of things, it did not deviate in a

23 material manner from the 94/6 split.

24 '19 was strictly, again, except for

25 the preferred return allocation, very common in

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2 these types of arrangements. The rest of it  
3 was split 94/6.  
4 In 2020, we were specifically  
5 directed again that the income should be  
6 allocated to, slash, HCRE or NexPoint.  
7 Q. Okay. And 6.4(a) doesn't show any  
8 allocation to HCRE; is that fair?  
9 A. That's fair.  
10 Q. And so is it BV's understanding that  
11 the allocation of profits and losses to HCRE in  
12 2020 -- withdrawn.  
13 So in 2018, BV allocated profits and  
14 losses as directed by Mr. Broaddus; is that  
15 fair?  
16 A. Yes.  
17 Q. And it wasn't -- did BV -- withdrawn.  
18 Did BV make any inquiry to determine  
19 whether or not the allocation of profits and  
20 losses that it was being directed to effectuate  
21 was consistent with the amended agreement?  
22 A. Well, again, we were told at the  
23 onset that there was to be flexibility amongst  
24 the partners as to how allocations occurred,  
25 and as part of the whole 2020 process, again,

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1 BARKER VIGGATO LLP - M. BARKER  
2 make a determination as to whether or not  
3 Mr. Broaddus' directions were consistent with  
4 the terms and provisions of the amended  
5 agreement?  
6 A. Now, again, I'm looking to apply it  
7 here. That, to me, is a sophisticated client  
8 with respect to all financial and tax matters,  
9 and, again, HCMLP/HCRE as related parties, and  
10 then they were making the determination of how  
11 they wanted allocations completed.  
12 Q. Okay. And I just want to put a fine  
13 point on it. Was it -- did BV make any effort  
14 to ascertain whether the instructions that it  
15 was receiving were consistent with the terms of  
16 the amended agreement?  
17 A. Well, to me it seemed reasonable to  
18 perform the allocations the way they did since  
19 the distributions of cash to which we, again,  
20 had no input in whatsoever, that the income in  
21 2020 would be consistent with how they had  
22 distributed the cash.  
23 Q. So it's BV's position that the  
24 allocation of profits and losses as directed by  
25 Mr. Broaddus is consistent with the agreement?

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2 we were directed to do the allocations by the  
3 client, and they also provided that statement  
4 that apparently their legal counsel had  
5 drafted -- and, again, I don't know if that's  
6 HCRE, I don't know if it's HCMLP. I mean, I  
7 don't have visibility into what was happening  
8 sort of behind the curtain between those two  
9 parties. All I know is that I was provided the  
10 statement, and as a result of that and clear  
11 direction from the client that this should be  
12 attached to the return and made part of the  
13 records, and that the losses -- or, I'm sorry,  
14 not losses -- the income were to be allocated  
15 in a manner in which they prescribed.  
16 Q. Okay. I'm going to just try and  
17 simplify this if I can.  
18 With respect to the allocation of  
19 profits and losses, is it fair to say that BV  
20 relied upon Mr. Broaddus to make -- withdrawn.  
21 Is it fair to say that BV relied upon  
22 Mr. Broaddus to report the allocation of  
23 SE Multifamily's profits and losses?  
24 A. Yes.  
25 Q. Is it fair to say that BV did not

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2 Is that BV's position?  
3 A. Again, I'm not saying that it is  
4 consistent with the agreement. I'm saying it  
5 is consistent with the direction that they  
6 provided to us to make these allocations.  
7 Q. And I appreciate that. That's the  
8 point that I'm trying to make. BV did as  
9 instructed by Mr. Broaddus with respect to the  
10 allocation of profits and losses; is that fair?  
11 A. That's fair.  
12 Q. And BV did not undertake any effort,  
13 nor was it its responsibility to determine,  
14 whether or not those instructions complied with  
15 the terms and conditions in the amended  
16 agreement. That wasn't your job, right?  
17 A. Right. It wasn't.  
18 Q. And you didn't do that, correct?  
19 A. Right. Well, especially when you're  
20 provided a statement from I guess what I  
21 thought to be outside legal counsel  
22 representing SE Multifamily from a tax  
23 perspective that said, please attach Statement  
24 1 to the return, and, therefore --  
25 Q. You're talking specifically about the

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2 footnote to the --

3 A. 2020.

4 Q. -- 2020 tax return?

5 A. Yes.

6 Q. Okay. What legal counsel are you

7 referring to?

8 A. I don't know who it was. Paul had

9 just indicated that they had this drafted by

10 outside tax counsel. Who that was, I don't

11 know. I didn't inquire as to who outside tax

12 counsel was. I just -- I mean, I accepted it

13 at face value.

14 Q. And is it fair to say that BV never

15 spoke with any outside counsel about the issue

16 that Mr. Broaddus brought to your attention in

17 September of 2021?

18 A. Correct.

19 Q. Okay. Do you know how HCRE made the

20 decision to allocate profits and losses among

21 the partners?

22 A. No.

23 Q. Do you know what motivations there

24 were in Mr. Broaddus's decision to allocate

25 profits and losses as instructed to BV?

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2 equity roll?

3 A. Well, we have, in essence, rolled

4 forward the -- what I'll call the capital

5 accounts of the partners in SE Multifamily

6 Holdings. So it's a spreadsheet that, in

7 essence, summarizes partner contributions,

8 partner distributions, partner allocations of

9 income by year, by partner. And it, in

10 essence, rolls it forward each year.

11 Q. And who -- do you know who creates

12 the equity rolls that you're referring to?

13 A. BV had.

14 Q. Okay. So the equity roll is a

15 document that's prepared by BV. Do I have that

16 right?

17 A. Right. But important point is that

18 this equity roll was prepared by financial

19 information provided by a combination of

20 BH Equities, HCRE, and HCMLP. So we just

21 summarized the information that we were

22 provided.

23 Q. And does BV use the equity rolls to

24 prepare SE Multifamily's tax returns?

25 A. I would say it's a part of the

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2 A. No.

3 Q. Did BV ever ask Mr. Broaddus or

4 anybody acting on behalf of any of the members

5 why profits and losses were being allocated in

6 the manner that BV was being directed?

7 A. No.

8 Q. So is it fair to say that BV has no

9 knowledge as to why profits and losses were --

10 withdrawn.

11 Is it fair to say that BV has no

12 knowledge as to the basis for the allocation of

13 profits and losses that BV was directed to

14 implement?

15 A. Yes, I think that's fair.

16 Q. Okay. Are you aware that BV -- I

17 assume you are since you did the production,

18 but I've got to lay a foundation. Are you

19 aware that BV produced certain documents called

20 equity rolls in response to the subpoena?

21 A. Yes.

22 Q. Do you have an understanding of what

23 an equity roll is?

24 A. Yes.

25 Q. What's your understanding of an

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2 overall work papers, and it allows us to track

3 in this case the tax capital accounts for

4 federal income tax reporting, because it

5 represents a summation of, again, partner

6 contributions, partner distributions, and

7 allocations of income.

8 Q. Has BV ever shared the equity rolls

9 with BH Equities?

10 A. I'm not certain. I don't -- I mean,

11 whether this particular work paper was shared

12 with BH Equities over the course of either, you

13 know, '19, '20, or '21, the years in question,

14 I mean, I'm just not certain whether we had or

15 had not.

16 Q. Okay. Do you know whether BV ever

17 shared any version of the equity roll with

18 anybody acting on behalf of HCRE or HCMLP?

19 A. Yes.

20 Q. And to whom did it share the equity

21 rolls. Do you remember?

22 A. It was provided, I think, to Paul and

23 maybe to others there at HCRE/Highland.

24 Q. And would it be provided to Paul each

25 year in the connection with BV's preparation of



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1 BARKER VIGGATO LLP - M. BARKER  
2 each year's tax returns?  
3 A. You know, again, I can't say for  
4 certain, but certainly, you know, Paul was very  
5 involved in the process of, again, determining  
6 how the allocations worked, and certainly in  
7 helping fine-tune what the distributions were  
8 and the capital contributions as provided and  
9 presented in this document.  
10 Q. In the ordinary course, would it be  
11 BV's practice to share the equity roll with the  
12 manager of an LLC as part of the process of  
13 preparing tax returns?  
14 A. Certainly if it's requested, we  
15 provide it. I mean, not all clients will come  
16 back and ask for, you know, a detailed equity  
17 roll. Some do, some don't.  
18 Q. And you mentioned earlier that one of  
19 the jobs that HCRE had was to make sure that  
20 contributions, distributions, and allocations  
21 of income were properly reflected on the tax  
22 returns. Do I have that right?  
23 A. Yes.  
24 Q. Okay. How would -- how would that be  
25 accomplished? How would you satisfy yourself

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2 A. They provided the allocations to us.  
3 MR. MORRIS: All right. Let's --  
4 let's take a short break here. We've been  
5 going for about an hour and a quarter.  
6 It's 11:45 New York time. Let's just take  
7 a 10-minute break. Is that okay, sir?  
8 THE WITNESS: Good with me.  
9 MR. MORRIS: Okay. Let's take a  
10 10-minute break. We'll come back in five  
11 minutes to the hour.  
12 THE WITNESS: Okay.  
13 MR. MORRIS: Thanks.  
14 THE WITNESS: Thanks.  
15 (Recess taken 10:44 a.m. CST - 10:58  
16 a.m. CST.)  
17 BY MR. MORRIS:  
18 Q. Let's -- let's pick up where we left  
19 off on the topic of equity rolls. Barker  
20 Viggato produced, I think, three forms of that  
21 document. Is that consistent with your  
22 recollection, sir?  
23 A. Three forms?  
24 Q. Well, one for each year.  
25 A. Oh, one for each year, yes, yes.

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2 that BV -- withdrawn.  
3 How would BV satisfy itself that HCRE  
4 as the manager has approved of the  
5 contribution, distribution, and allocation  
6 information in the tax returns?  
7 A. Because certainly in the initial  
8 years, we had provided to Paul a summary of the  
9 contributions as we had been -- which we had  
10 been provided, and there were probably a year  
11 or two when they came back and said, no, we  
12 need to adjust X or Y. And so then by  
13 adjusting X or Y, to me, the client has, you  
14 know, acquiesced to what is presented in the  
15 tax return, not to mention the client has  
16 provided a tax return to review and sign,  
17 because they -- clients have the ultimate  
18 responsibility on the accuracy of their tax  
19 returns.  
20 So the -- and their signature of the  
21 fact that they, you know, signed the tax return  
22 after they completed their review would be, to  
23 me, an indication that they had reviewed and  
24 accepted the allocations.  
25 Q. Okay.

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2 Q. That's all I'm asking.  
3 (Exhibit 4 marked.)  
4 MR. MORRIS: Let's put up the first  
5 one. We'll mark it as Exhibit 4, which I  
6 think is the 2018 equity roll.  
7 BY MR. MORRIS:  
8 Q. And while we're waiting for Ms. Canty  
9 to do that, is it a fact that SE Multifamily  
10 received an extension for the filing of their  
11 tax returns in each year since its formation?  
12 A. Yes.  
13 Q. So that the tax returns for  
14 SE Multifamily were completed and filed in  
15 September of the year following the taxable  
16 year; is that right?  
17 A. That's right.  
18 Q. So the 2018 returns were completed  
19 and filed in 2019, correct?  
20 A. Correct.  
21 Q. And the 2019 returns were completed  
22 and filed in September 2020, correct?  
23 A. Correct.  
24 Q. And the 2020 returns were completed  
25 and filed in September 2021, correct?

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2 A. Correct.

3 Q. But you have not yet prepared the

4 returns for 2021, and it's not yet clear

5 whether your firm will perform that service for

6 SE Multifamily, correct?

7 A. Correct.

8 Q. Okay. So what we've put up on the

9 screen, the 2018 equity roll. Do you see that?

10 A. I see it.

11 Q. And how long in advance of September

12 2019 did BV prepare this document?

13 A. You know what, I don't remember the

14 exact dates. It was, you know, probably some

15 number of weeks, maybe a month before the

16 return was due on extension.

17 Q. Okay. So is it fair to say somewhere

18 between two and five weeks before the September

19 15th deadline, this document was prepared?

20 A. Yes.

21 Q. Okay. And where did BV obtain the

22 information that it used to create the 2018

23 equity roll?

24 A. It was from the financials provided

25 by the client.

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2 Q. There's one piece of the equity roll

3 that's set forth under GAAP capital accounts,

4 and then there's another piece that's set forth

5 under tax capital accounts. Do you see that?

6 A. Well, again, I mean, there's two sets

7 of columns, one obviously for the GAAP capital

8 accounts and another set of columns for the tax

9 capital accounts.

10 Q. Okay. And can you explain to me what

11 the difference is?

12 A. Yes. The GAAP capital accounts

13 reflect the client-provided financials and the

14 information they gave us as recorded on the

15 books that they were using internally to track

16 this entity, and then the tax capital

17 accounts -- the primary difference, as you can

18 see, is on what I'll call Row 13, the income or

19 loss. And so those amounts were different

20 under GAAP rules versus tax rules.

21 Q. And can you explain to me in layman's

22 terms, if you're able, what the difference is

23 between the tax treatment and the GAAP

24 treatment of income and losses?

25 A. Well, for example, I think in this

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2 Q. And to the best of your knowledge,

3 does this document accurately set forth the

4 information that was presented?

5 A. Yes.

6 Q. Are you aware of any errors in this

7 document as you sit here today?

8 A. No.

9 Q. Has anybody ever told BV that any of

10 the information that's reflected in this

11 document is inaccurate or incorrect?

12 A. We have not been told that anything

13 is incorrect.

14 Q. Okay. Do you see that it shows that

15 HCRE made a capital contribution of

16 approximately \$288 million? And I'm looking

17 specifically in Box B-11?

18 A. Yes.

19 Q. Do you know the source of that

20 capital contribution? Do you know where HCRE

21 got that money?

22 A. I do not.

23 Q. Is that relevant to BV's work in

24 preparing SE Multifamily's tax returns?

25 A. No.

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2 year they had taken a -- I'll call it a

3 substantial amount of depreciation in their

4 GAAP financials, and the tax depreciation was

5 considerably less. I think that is the most

6 significant item in that particular year

7 between the GAAP capital accounts -- well,

8 between the GAAP income -- or I should say GAAP

9 loss and the tax income. But there were also

10 the other differences as well. I mean, we will

11 account for prepaid items differently and a

12 host of other items.

13 But, I mean, by and large what it is

14 is under the Internal Revenue Code, we have

15 very precise rules of how certain items are

16 treated and depreciated, et cetera. And so

17 that's really, in layman's terms, the

18 difference.

19 Q. And I think you mentioned earlier

20 that Mr. Broaddus gave direction to BV as to

21 how to allocate the profits and losses in each

22 year. Do I have that right?

23 A. Yes.

24 Q. Is Mr. Broaddus's directions

25 reflected in the GAAP capital accounts or in



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1 BARKER VIGGATO LLP - M. BARKER  
2 the tax capital accounts?  
3 A. It's really in the tax capital  
4 accounts.  
5 Q. Okay. So is it fair to say that the  
6 GAAP capital accounts shows the allocation of  
7 SE Multifamily's profits and losses in 2018 but  
8 that the tax capital accounts shows the  
9 allocation of profits and losses for  
10 SE Multifamily in 2018, as directed by  
11 Mr. Broaddus?  
12 A. Yes.  
13 Q. And, again, Mr. Broaddus didn't  
14 provide an explanation as to why he was  
15 directing BV to allocate SE Multifamily's  
16 profits and losses for 2018 in a way that  
17 differed from the GAAP accounting. Fair?  
18 A. Well, I think your statement is, I  
19 guess, somewhat off in that we were strictly  
20 focused on the allocation of income for tax  
21 purposes. And so how they did things for GAAP  
22 was not all that critical. What we were really  
23 focused on was the allocation of income for tax  
24 purposes and then reflecting that in the tax  
25 capital accounts.

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1 BARKER VIGGATO LLP - M. BARKER  
2 the substance of the information reflected on  
3 the equity roll was provided to him?  
4 A. Yes. I think that's fair.  
5 Q. Okay. Do you recall whether  
6 Mr. Broaddus or anybody acting on behalf of any  
7 of the members ever informed BV that any of the  
8 information reflected on this equity roll was  
9 inaccurate in any way?  
10 A. No. We were never informed that any  
11 of this information was inaccurate.  
12 MR. MORRIS: Okay. Let's go to the  
13 next exhibit, Exhibit 5, which is the 2019  
14 equity roll.  
15 (Exhibit 5 marked.)  
16 BY MR. MORRIS:  
17 Q. Is it fair to say that this version  
18 of the equity roll simply adds the information  
19 for the tax year 2019?  
20 A. Yes.  
21 Q. So it's -- is it fair to describe  
22 this as a build-up?  
23 A. Yes.  
24 Q. So you start with the information at  
25 the top, then you've got the 2018 activity,

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1 BARKER VIGGATO LLP - M. BARKER  
2 Q. Okay. So line 13, the allocation of  
3 income, that was determined by Mr. Broaddus,  
4 correct?  
5 A. Right.  
6 Q. And BV doesn't have review and didn't  
7 have responsibility for determining whether  
8 that allocation was consistent with the terms  
9 of the amended agreement. Fair?  
10 A. Fair.  
11 Q. And do you recall if this -- I don't  
12 mean to put words in your mouth. That's not my  
13 job. My job is to try to just get evidence  
14 here.  
15 Did you testify earlier that you  
16 recall providing equity rolls to Mr. Broaddus?  
17 A. At some point this information in  
18 some form or fashion, I believe, was exchanged,  
19 because I think they had us make an adjustment  
20 to the amount of the distribution.  
21 Q. And do you recall what year that was?  
22 A. I don't know. It was either '18 or  
23 '19.  
24 Q. Okay. Is it fair to say that if the  
25 equity roll was provided to Mr. Broaddus, that

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1 BARKER VIGGATO LLP - M. BARKER  
2 you've got the equity determinations at the end  
3 of 2018, and then you show the 2019 activity;  
4 is that fair?  
5 A. That's fair.  
6 Q. And, again, would the allocation of  
7 SE Multifamily's profits and losses for 2019,  
8 as reflected in line 20 -- actually, withdrawn.  
9 There is no -- there are no entries  
10 in the GAAP -- withdrawn. It's just my  
11 eyesight. Let me try to ask the question  
12 again.  
13 Is it fair to say that the allocation  
14 of income and losses set forth in line 20 were  
15 directed by HCRE?  
16 A. Well, let's separate GAAP versus tax.  
17 I wasn't concerned about how they had allocated  
18 GAAP income or loss --  
19 Q. Okay.  
20 A. -- what was really occurring from a  
21 GAAP basis. I was more focused on the tax  
22 allocations, the tax capital accounts there in  
23 columns I through M, although it's kind of cut  
24 off on my screen.  
25 And so -- yeah, I mean, those

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1 BARKER VIGGATO LLP - M. BARKER  
2 allocations to me are consistent with the  
3 guidance we had and also from the client, and  
4 it's also, in this year, consistent with the  
5 agreement.  
6 Q. And that's because it was allocated  
7 94 percent to HCMLP and 6 percent to  
8 BH Equities?  
9 A. Right. But, again, you have to layer  
10 in the fact that Liberty CLO is a preferred  
11 partner. And so they received an allocation of  
12 income in that year based on the cash they were  
13 distributed associated with their preferred  
14 interest.  
15 So it's like you have to --  
16 mechanically the way you have to look at it is,  
17 all right, Liberty CLO received X for an income  
18 allocation. So you take the total plus the  
19 amount given to Liberty, and the residual,  
20 what's left, is 94/6.  
21 Q. Okay. And did anybody on -- acting  
22 on behalf of any of the members of SE --  
23 withdrawn.  
24 Do you recall if this particular  
25 equity roll was ever provided to any of the

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1 BARKER VIGGATO LLP - M. BARKER  
2 too. There we go.  
3 BY MR. MORRIS:  
4 Q. Mr. Barker, is this the 2000 -- is  
5 this the version of the equity roll that was  
6 prepared in connection with the preparation of  
7 the 2020 tax returns for SE Multifamily?  
8 A. Yes.  
9 Q. And does this, again, simply carry  
10 forward -- withdrawn.  
11 I see that there's nothing in 2020  
12 activity for GAAP capital accounts. Am I  
13 reading that correctly?  
14 A. You are.  
15 Q. Do you know why there's no  
16 information provided for 2020?  
17 A. Well, yeah, I mean, we just stopped  
18 tracking the GAAP capital because it became  
19 irrelevant. Starting as of 1/1/20, the IRS  
20 regulations required us to report capital  
21 accounts on the Schedule K-1 on a tax basis,  
22 and so these GAAP capital accounts were no  
23 longer being presented anywhere on the tax  
24 return. Well, they were not being presented on  
25 the partners' K-1s. It was just -- it was a

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1 BARKER VIGGATO LLP - M. BARKER  
2 members of SE Multifamily?  
3 A. You know, I just can't say for  
4 certainty.  
5 Q. Okay. Do you know if BV provided the  
6 substance of the information reflected on this  
7 document to HCRE prior to the time that the  
8 2019 tax returns were completed?  
9 A. Yes, I would say that's probably  
10 accurate.  
11 Q. Okay. Did anybody acting on behalf  
12 of any member ever tell BV that they believed  
13 that the substance of the information reflected  
14 on this document was inaccurate in any way?  
15 A. Did not.  
16 Q. Does BV have any reason to believe  
17 today that there's anything on this document  
18 that is inaccurate in any way?  
19 A. Not as of now, no.  
20 MR. MORRIS: Let's go to the next  
21 version of this document. We'll mark as  
22 Exhibit 6 the 2020 equity roll.  
23 (Exhibit 6 marked.)  
24 MR. MORRIS: And if we could slide to  
25 the left so Mr. Barker can see the GAAP,

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1 BARKER VIGGATO LLP - M. BARKER  
2 change in the IRS regs requiring disclosure of  
3 tax capital accounts.  
4 Q. Okay. Do you see that there is a  
5 determination made as to the equity at December  
6 31st, 2020? I think that's line 31.  
7 A. Yes.  
8 Q. Where did those numbers come from?  
9 A. Well, it's just -- it's the  
10 rolling -- I mean, it starts with the balance  
11 from 2019 and reflects contributions, reflects  
12 income, reflects distributions, and any  
13 nondeductible expenses.  
14 Q. The income and loss reflected in line  
15 28, that allocation of income and losses was  
16 determined by HCRE, correct?  
17 A. Yes.  
18 Q. That was the direction that BV was  
19 given, correct?  
20 A. Correct.  
21 Q. And BV didn't undertake any analysis  
22 or seek to make any determination as to whether  
23 those allocations were consistent with the  
24 terms of the amended agreement, correct?  
25 A. Correct.

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. Then line 29, there's a reference to

3 distributions. Do you see that?

4 A. Yes.

5 Q. And those distributions were made at

6 the direction of the manager, HCRE. Is that

7 BV's understanding?

8 A. Well, again, I'm going to go back to

9 the fact that the client here, HCRE, HCMLP,

10 BH Equities, they were providing us financials

11 that showed how much was distributed to each

12 party, okay? All we're doing is we're taking

13 the amount that they said was distributed to

14 each party, and we're putting it on this

15 spreadsheet.

16 Q. Can you identify anybody that BV has

17 communicated who BV believed was acting on

18 behalf of HCMLP?

19 A. Wait. Say that again.

20 Q. Can you identify any individual that

21 BV believes was acting on behalf of HCMLP?

22 A. Well, again --

23 MR. GAMEROS: Objection. Vague as to

24 time. When are you asking about, John?

25 MR. MORRIS: Anytime.

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1 BARKER VIGGATO LLP - M. BARKER

2 Q. I appreciate that. I do on many

3 levels.

4 Okay. So did anybody ever explain to

5 BV whether and to what extent HCMLP's

6 bankruptcy filing had on SE Multifamily, if

7 any?

8 A. No.

9 Q. Did anybody ever inform BV that the

10 bankruptcy filing had any impact on

11 SE Multifamily?

12 A. No.

13 Q. Did anybody ever inform BV that

14 HCMLP's bankruptcy filing impacted HCRE's

15 ability to make distributions?

16 A. No.

17 (Exhibit 7 marked.)

18 MR. MORRIS: All right. Let's take

19 this down and put up the next exhibit,

20 Exhibit 7, which is just a short e-mail

21 exchange.

22 Oh, before we leave that -- don't

23 take that yet, please.

24 BY MR. MORRIS:

25 Q. Mr. Barker, the document we're

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1 BARKER VIGGATO LLP - M. BARKER

2 A. I mean, to me these parties were

3 related, and I didn't know if Paul was really

4 representing just HCRE or if he was

5 representing HCMLP or both.

6 BY MR. MORRIS:

7 Q. Okay. That's fair. Are you aware

8 that HCMLP filed for bankruptcy?

9 A. Yes.

10 Q. When did BV learn that HCMLP filed

11 for bankruptcy?

12 A. Gosh. Probably about four weeks ago,

13 give or take a few days.

14 Q. So until sometime in July 2022, BV

15 was unaware that HCMLP filed for bankruptcy.

16 Do I have that right?

17 A. You have that right.

18 Q. Are you aware, sir, of the nature of

19 the dispute at issue here?

20 A. All I know is, you know, that the

21 parties are at odds with each other between

22 HCRE/NexPoint and Highland Capital, and what

23 all is happening behind the scenes and what's

24 happening to whom and who's suing whom or

25 whatever, it's -- no, I don't know.

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1 BARKER VIGGATO LLP - M. BARKER

2 looking at here, the 2020 equity roll -- I

3 apologize if I asked these questions. I just

4 don't recall. Do you recall whether BV

5 provided this version of the equity roll to any

6 of the members of SE Multifamily?

7 A. I don't recall.

8 Q. Do you recall whether BV provided the

9 substance of the information reflected on this

10 document to HCRE prior to the time the 2020 tax

11 returns were completed?

12 A. Well, we certainly provided them a

13 copy of the tax return and reflected in the tax

14 return would be this information. It was

15 present on everybody's Schedule K-1 for HCRE,

16 Highland, BH, Liberty. It all presents this

17 information, you know, on their Schedule K-1.

18 Q. And this is -- this is the

19 conversation that took place in -- this would

20 have taken place in September 2021, right?

21 A. Right. I mean, they would have been

22 provided the tax return in order for them to

23 review, and then they have to sign it before we

24 could file it.

25 MR. MORRIS: Okay. All right. Let's

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1 BARKER VIGGATO LLP - M. BARKER  
2 go to the next document, please,  
3 Exhibit 7.  
4 BY MR. MORRIS:  
5 Q. And this is just a short e-mail  
6 exchange, and I'm focused first on your e-mail  
7 there to Paul Broadus. Do you see that?  
8 A. Yes.  
9 Q. Can you help me to understand the  
10 substance of your second paragraph there where  
11 you're referring to the GAAP and tax issues for  
12 Liberty?  
13 A. Well, I believe it must have been,  
14 because they were showing a total distribution  
15 of 17 million to Liberty, and what this is  
16 really getting at is how much of the  
17 distribution was returning their capital versus  
18 a return at the specified preferred return rate  
19 on their capital.  
20 Q. And is it the latter issue that  
21 caused BV -- no, withdrawn.  
22 Is the latter issue -- withdrawn.  
23 Is it BV's understanding that the  
24 latter issue is what caused Mr. Broadus to  
25 allocate approximately 3 percent of

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1 BARKER VIGGATO LLP - M. BARKER  
2 received from Mr. Broadus?  
3 A. Yes.  
4 Q. Okay. And you asked the question in  
5 the next paragraph, should HCRE be receiving an  
6 income allocation this year. Do you see that?  
7 A. Yes.  
8 Q. Why did you ask that question, if you  
9 remember?  
10 A. I don't remember.  
11 Q. Did you ever have any discussion with  
12 anybody at HCRE as to whether or not any of  
13 SE Multifamily's profits or losses should be  
14 allocated to HCRE?  
15 A. Now, again, they provided the  
16 direction of, you know, how they wanted the  
17 allocations done in '18 and '19 and '20.  
18 Q. Okay.  
19 A. In fact, I was just being thorough in  
20 asking the question.  
21 Q. Okay.  
22 MR. MORRIS: We can take this down.  
23 BY MR. MORRIS:  
24 Q. You're familiar with the IRS form  
25 K-1; is that right?

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1 BARKER VIGGATO LLP - M. BARKER  
2 SE Multifamily's profits to Liberty in 2019?  
3 A. Yeah, I don't recall the percentage  
4 that ends up getting allocated to them, but,  
5 yes, we were trying to allocate Liberty CLO  
6 income equal to the amount of their preferred  
7 return.  
8 Q. All right. And what do you mean in  
9 the next sentence beginning with the word  
10 "Remainder"? "Remainder of income is allocated  
11 to HCMLP and BH based on their common equity  
12 ownership percentages on a pro-rata basis."  
13 What does that mean?  
14 A. Well, just the fact that the  
15 remainder of the income is going to be  
16 allocated based on the ratios of 94/6.  
17 Q. So after allocating the portion of  
18 the income attributable to Liberty, is the  
19 question you're asking whether the balance of  
20 the income should be allocated 94/6 --  
21 A. Yes.  
22 Q. -- consistent with the agreement?  
23 A. Yeah.  
24 Q. Okay. And is that, in fact, what --  
25 is that, in fact, the direction that BV

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1 BARKER VIGGATO LLP - M. BARKER  
2 A. Yes.  
3 Q. Can you just describe for me your  
4 understanding of what a Form K-1 is?  
5 A. Yeah. In essence, it is reporting to  
6 each partner each partner's allocable share of  
7 either income, loss, deductions, credits,  
8 et cetera, and that's presented on -- on the  
9 K-1. So each partner knows how much income or  
10 loss they have been allocated in a given year  
11 and that they need to reflect on their tax  
12 returns.  
13 Q. And did the K-1s also identify the  
14 interest that each member has in the  
15 enterprise?  
16 A. Yes.  
17 Q. And does the client --  
18 A. That is, I guess, a judgment call as  
19 to what's presented there as far as the  
20 ownership percentage. It can either be on  
21 stated percentages or it can be on actual  
22 allocations of income in that year.  
23 Q. Or can it be both in certain  
24 circumstances?  
25 A. Well, I mean, you only present one

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1 BARKER VIGGATO LLP - M. BARKER  
2 profit or loss ratio at the end of the year,  
3 and so it's likely either one or the other.  
4 Q. Did BV prepare the K-1s for each of  
5 the members of SE Multifamily for the tax years  
6 2018, '19, and '20?  
7 A. Yes.  
8 Q. Do you know whether any of those K-1s  
9 have ever been amended?  
10 A. Not to my knowledge.  
11 Q. Has BV ever had any discussion with  
12 anybody at any time as to whether the K-1s  
13 should be amended in any respect?  
14 A. No.  
15 Q. And the information for the K-1s, is  
16 that obtained from the client?  
17 A. Yes.  
18 Q. Is there any information that's in a  
19 K-1 that BV obtains independent from the  
20 client?  
21 A. No.  
22 Q. Is it fair to say that BV relies on  
23 the accuracy and the completeness of the  
24 information that it receives from the client in  
25 order to prepare the K-1?

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1 BARKER VIGGATO LLP - M. BARKER  
2 A. Yes.  
3 Q. That is BV's understanding, correct?  
4 A. Correct.  
5 Q. Would it be fair to characterize BV's  
6 client as SE Multifamily, as directed by its  
7 manager, HCRE?  
8 A. Yes.  
9 Q. That would be accurate, correct?  
10 A. Yeah, I think so, yes.  
11 Q. You don't have any reason to believe  
12 that HCMLP was ever the manager of  
13 SE Multifamily, correct?  
14 A. Correct.  
15 Q. And you don't have any reason to  
16 believe that HCMLP was ever authorized to cause  
17 SE Multifamily to file tax returns, right?  
18 A. Right.  
19 (Exhibit 8 marked.)  
20 MR. MORRIS: Let's go through the  
21 K-1s. So if we could put up Exhibit 8,  
22 please.  
23 BY MR. MORRIS:  
24 Q. Just so you -- I am trying to get  
25 through this quickly and then I'm probably

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1 BARKER VIGGATO LLP - M. BARKER  
2 A. Yes.  
3 Q. And in the case of SE Multifamily,  
4 who exactly is BV's client?  
5 A. Well, I guess a combination to me,  
6 really, of HCRE and HCMLP.  
7 Q. And is SE Multifamily the client,  
8 too?  
9 A. Yes.  
10 Q. And is BH Equities the client?  
11 A. Well, they're obviously a partner in  
12 the partnership, but I don't know that I view  
13 them, quote/unquote, as a -- necessarily as a  
14 client.  
15 Q. Are you -- are you familiar with the  
16 phrase "manager" in the context of limited  
17 liability companies?  
18 A. Yes.  
19 Q. Do you know who the manager of  
20 SE Multifamily is?  
21 A. I believe it was HCRE.  
22 Q. Do you know whether under the amended  
23 agreement HCRE, as the manager, had the  
24 exclusive responsibility for causing SE  
25 Multifamily's tax returns to be prepared?

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1 BARKER VIGGATO LLP - M. BARKER  
2 close to done.  
3 I'm going to go through each K-1,  
4 through each of the four members of  
5 SE Multifamily, first in 2018, then in 2019,  
6 and then in 2020.  
7 A. Okay.  
8 Q. And, Mr. Barker, I really -- I'll  
9 just pause for a second and say I greatly  
10 appreciate your patience, and I'll repeat again  
11 that if there's anything that you need to see  
12 that's not on the screen, let me know, okay?  
13 A. Okay.  
14 Q. This is -- do you recall in BV's  
15 production there was a set of K-1s that was  
16 produced as the original K-1s and there was  
17 another set that was produced as drafts?  
18 A. Yes.  
19 Q. Okay. I'm going to represent to you  
20 that what I've attempted to do, anyway, is to  
21 extract from the original pile the K-1s for  
22 each of the members in 2018 and '19, okay? So  
23 that's my representation to you is that this --  
24 this is the 2018 K-1 for HCMLP. Do you see  
25 that?



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1 BARKER VIGGATO LLP - M. BARKER  
2 A. I see it.  
3 Q. Okay. And it shows -- it shows that  
4 HCMLP, at the beginning of the -- withdrawn.  
5 2018 is kind of a stub year, right?  
6 It's only for a portion of the year because  
7 SE Multifamily was created in August of 2018.  
8 Do I have that right?  
9 A. Right.  
10 Q. Okay. And, in fact, this is just for  
11 the period October 1st through the end of the  
12 year, right?  
13 A. Right.  
14 Q. And if we could scroll down just a  
15 little bit, you'll see that on HCMLP's 2018  
16 K-1, it was reported as having approximately 46  
17 percent of the profits and losses at the  
18 beginning and the end of the reporting period.  
19 Have I read that correctly?  
20 A. You've read that correctly.  
21 Q. And 46 percent of the capital of  
22 SE Multifamily at the beginning and at the end  
23 of the reporting period, correct?  
24 A. Correct.  
25 Q. Okay. The information on this

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1 BARKER VIGGATO LLP - M. BARKER  
2 Q. Well, who determined the numbers that  
3 are in Box J?  
4 A. I would say BV did.  
5 Q. And where did BV get the information  
6 that's in Box J?  
7 A. From the LLC agreement.  
8 Q. If I put the LLC agreement up on the  
9 screen, would you be able to show me where in  
10 the LLC agreement?  
11 A. Yep.  
12 Q. Do you know BV relied upon or what  
13 provision BV relied upon to set the profit and  
14 losses at 46 percent?  
15 A. Yes.  
16 Q. Okay. Can you tell me, please?  
17 A. Yeah, it's Article 6.1.  
18 Q. And what provision of Article 6.1 did  
19 BV rely upon for purposes of --  
20 A. I believe it was 6.1(a).  
21 Q. Okay. So does 6.1(a) --  
22 A. Well, you know what? The other  
23 thing, too, is -- hold on. If you go to  
24 Schedule A, which is attached to the LLC  
25 agreement --

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1 BARKER VIGGATO LLP - M. BARKER  
2 document -- you know what, I'm going to speed  
3 this up.  
4 Are you familiar with the K-1s that  
5 BV prepared for each of SE Multifamily's  
6 members in 2018, '19, and '20?  
7 A. Yes. I mean, I don't know how  
8 detailed you're going to get. Do I remember  
9 exact numbers and amounts? No, probably not.  
10 Q. Okay. And has any member ever  
11 suggested to you that any of the K-1s were  
12 wrong or inaccurate in any way?  
13 A. No.  
14 Q. Do you know why the K-1 for 2018 for  
15 HCMLP showed profits and losses at 46 percent  
16 rather than the 94 percent we saw in the  
17 amended agreement?  
18 A. Well, as we've discussed earlier,  
19 these percentages are the common ownership  
20 percentages in the agreement. I mean, there's  
21 some latitude there in what percentages are  
22 presented in what I call Box J. And so -- but  
23 they don't necessarily -- they don't have a  
24 bearing, you know, on the overall allocation of  
25 profits.

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1 BARKER VIGGATO LLP - M. BARKER  
2 Q. Yes, sir.  
3 A. -- that's really -- I mean, the  
4 stated percentages, ownership percentages are  
5 really coming from that schedule.  
6 Q. Okay. So that's where -- Schedule A  
7 is where BV got the information from --  
8 A. Yes.  
9 Q. -- for J?  
10 A. Yes.  
11 Q. I think you have a printed-out copy  
12 of the amended agreement?  
13 A. I do, yes.  
14 Q. And if you can flip to Section  
15 6.4(a), do you see that profits and losses --  
16 A. Uh-huh.  
17 Q. -- allocated 94 percent to HCMLP and  
18 6 percent to BH?  
19 A. Right.  
20 Q. Do you know why the profits and  
21 losses on this K-1 were not allocated 94  
22 percent to HCMLP?  
23 A. Again, it goes back to the direction  
24 we were provided. And the amounts are the  
25 percentages presented in Box J. I mean,

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1 BARKER VIGGATO LLP - M. BARKER  
2 are 46.06 percent?  
3 A. Right.  
4 Q. To the best of your recollection, are  
5 the capital percentages -- did the capital  
6 percentages remain the same for all members  
7 throughout the three tax years?  
8 A. I think so, but I don't know unless I  
9 looked at the 2020 K-1 to, you know,  
10 definitively say that.  
11 MR. MORRIS: Okay. So -- so let's --  
12 let's pull up Exhibit 17.  
13 (Exhibit 17 marked.)  
14 BY MR. MORRIS:  
15 Q. And this is the 2020 K-1 for HCMLP.  
16 Do you see that?  
17 A. Uh-huh.  
18 Q. And it also shows --  
19 A. Yes, it does.  
20 Q. -- 46.06 percent for capital? Do you  
21 see that?  
22 A. Yep.  
23 Q. So looking at the three K-1s, is it a  
24 fact that BV prepared K-1s for HCMLP that  
25 consistently showed it had a 46.06 percent

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1 BARKER VIGGATO LLP - M. BARKER  
2 has that informs taxpayers as to what's  
3 permitted and what's not permitted with respect  
4 to the allocation of profits for an LCC?  
5 A. Well, the guidelines would be there  
6 are certain regulatory allocations that are  
7 intended to make sure that the allocations have  
8 what I will call economic effect.  
9 Q. And what does it mean to have  
10 economic effect?  
11 A. Probably in layman's terms the best  
12 summary would be that upon ultimate dissolution  
13 or termination of a partnership, if there were  
14 a final liquidation, is that the capital  
15 accounts that reflected the allocations reflect  
16 how the partners will share in the  
17 distributable proceeds.  
18 Q. And from BV's perspective, did the  
19 allocations that HCRE directed for  
20 SE Multifamily, did they have economic effect?  
21 A. Yes. I have no reason to believe  
22 they didn't.  
23 Q. Did BV do any work to confirm that  
24 the allocations had economic effect?  
25 A. Well, embedded in the LLC agreement

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1 BARKER VIGGATO LLP - M. BARKER  
2 capital interest in SE Multifamily?  
3 A. Yes.  
4 Q. And did anybody ever tell BV that  
5 that was incorrect or mistaken or in error?  
6 A. No.  
7 MR. MORRIS: And if we can go back to  
8 the 2019 K-1. I'm sorry, Exhibit 12.  
9 BY MR. MORRIS:  
10 Q. In Box 2, there's approximately  
11 \$32 million of SE Multifamily profits that were  
12 allocated to HCMLP. Am I reading that  
13 correctly?  
14 A. Yes.  
15 Q. And that was a decision that was made  
16 by HCRE, correct?  
17 A. Correct.  
18 Q. Do you know if HCMLP is also a  
19 pass-through entity?  
20 A. Not definitively, no.  
21 Q. Did -- does BV have any knowledge as  
22 to who the ultimate beneficial owners of HCMLP  
23 are?  
24 A. No.  
25 Q. Are there any guidelines that the IRS

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1 BARKER VIGGATO LLP - M. BARKER  
2 there's something called qualified income  
3 offset, which is intended to support  
4 allocations that could be disproportional such  
5 that a partner would have to, for example,  
6 recognize income in order to restore the  
7 capital account back to zero.  
8 Q. And has anybody tried to do that with  
9 respect to SE Multifamily?  
10 A. Well, I mean, that would really come  
11 into play either in the tax year 2021 or at  
12 some point when there was a dissolution,  
13 windup, termination of the entity.  
14 (Exhibit 16 marked.)  
15 MR. MORRIS: Let's -- let's take a  
16 look at -- I think it's Exhibit 16, which  
17 is an e-mail.  
18 BY MR. MORRIS:  
19 Q. And if we can start at the bottom.  
20 Do you see this is an e-mail from a gentleman  
21 named Mr. Rios --  
22 MR. MORRIS: Oh, I guess you have to  
23 scroll up just a little bit to see  
24 actually who it was sent from. It's on  
25 the prior page.



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1 BARKER VIGGATO LLP - M. BARKER  
2 BY MR. MORRIS:  
3 Q. Do you see it's from Mr. Broaddus --  
4 A. Yes.  
5 Q. -- to you and some others, including  
6 Mr. Kirshner?  
7 A. Yes.  
8 Q. And he's asking the question on  
9 September 13th, 2021, whether the  
10 SE Multifamily's tax returns had been filed at  
11 that point. Do you see that?  
12 A. Yes.  
13 Q. And was September 15th the filing  
14 deadline, to the best of your knowledge?  
15 A. Yes.  
16 Q. And was BV in the process of  
17 preparing SE Multifamily's tax returns on  
18 September 13th, 2021?  
19 A. Yes.  
20 Q. And do you see that Mr. Broaddus  
21 informs you and the other recipients of the  
22 e-mail that, "We want to add a statement to the  
23 return and then file a superseded return on or  
24 before Wednesday"? Do you see that?  
25 A. Yes.

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1 BARKER VIGGATO LLP - M. BARKER  
2 topic; is that fair?  
3 A. That's fair.  
4 Q. Do you know whether anybody in your  
5 firm would have spoken or -- withdrawn.  
6 Do you know whether anybody in your  
7 firm did speak with Mr. Broaddus about the  
8 topic referenced in this e-mail?  
9 A. Yeah, no, I'm not aware of anybody in  
10 my firm having spoken to Paul about this  
11 particular e-mail and statement.  
12 Q. All right. Let's -- let's see where  
13 this leads.  
14 MR. MORRIS: If we can scroll up,  
15 please.  
16 BY MR. MORRIS:  
17 Q. You'll see that Mr. Rios responds.  
18 Do you know who Mr. Rios is?  
19 A. Yeah, he's one of the -- you know,  
20 Skyview Group is somehow or another, I guess,  
21 maybe a group that's either outsourced or  
22 affiliated with HCMLP and/or HCRE, and he was  
23 one of the employees there.  
24 Q. Did you understand that he was  
25 working on behalf of the manager in this

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1 BARKER VIGGATO LLP - M. BARKER  
2 Q. Is this the moment that you learned  
3 that HCRE wanted to create that footnote that  
4 you mentioned earlier today?  
5 A. Yes, it is.  
6 Q. Was there any communication with BV  
7 about that footnote at any time prior to  
8 September 13th?  
9 A. I don't think so.  
10 Q. You don't have a recollection of  
11 that?  
12 A. I don't have a recollection of it.  
13 Q. Did you have an understanding when  
14 you received this e-mail about why they would  
15 want to file a superseded return?  
16 A. No.  
17 Q. Did you ever have any -- withdrawn.  
18 Did you ever speak to Mr. Broaddus  
19 about this -- the issue that he's raising in  
20 this e-mail, or is all of your communication  
21 reflected in the e-mail exchanges that you've  
22 produced?  
23 A. No, I don't recall.  
24 Q. You don't recall having any  
25 conversations with Mr. Broaddus about this

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1 BARKER VIGGATO LLP - M. BARKER  
2 regard?  
3 A. Well, I mean, he was certainly  
4 working on behalf of, you know, some  
5 combination of NexPoint and HCMLP and  
6 everything, trying to get the return filed.  
7 Q. Okay. So he raises a question -- he  
8 informs everybody that he hasn't signed the  
9 e-file authorization and he notes some changes  
10 of address. Do you see that?  
11 A. Well, it says -- he says, "I haven't  
12 signed the e-file authorizations yet."  
13 Q. Oh, if I misstated that, I apologize.  
14 A. Yes.  
15 Q. He informed everybody that he hadn't  
16 yet filed --  
17 A. Right.  
18 Q. He informed everybody that he hadn't  
19 yet signed the authorization, and he gives some  
20 instruction about certain changes of address;  
21 is that fair?  
22 A. That's fair.  
23 Q. Okay. And then if we go to the  
24 bottom of the next page, Mr. Kirshner responds,  
25 you'll see, and he informs everybody that he

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1 BARKER VIGGATO LLP - M. BARKER

2 hasn't yet filed the return, and he's asking

3 for the statement that Mr. Broaddus referred to

4 earlier. Is that a fair characterization of

5 that?

6 A. Yes.

7 Q. Okay. At this point are you aware

8 yet of what the substance of the statement is

9 going to be?

10 A. No.

11 Q. And then if we can scroll up to the

12 next e-mail, there is an e-mail from Mr. Rios

13 that informs you and Mr. Kirshner that

14 Mr. Broaddus will send the statement over once

15 it's ready. Do you see that?

16 A. Yes.

17 Q. Okay.

18 MR. MORRIS: And then if you'll

19 scroll up.

20 BY MR. MORRIS:

21 Q. Later in the day there's an e-mail

22 from Mr. Kirshner that doesn't address the

23 substance of the statement that's ultimately

24 tendered to BV; is that fair? It's

25 administrative in nature?

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1 BARKER VIGGATO LLP - M. BARKER

2 What exactly transpired in that conversation, I

3 don't recall.

4 Q. Okay. Is this the first time you

5 learned of a dispute between HCMLP and HCRE?

6 A. Yes.

7 Q. Did you ask any questions --

8 withdrawn.

9 Did BV request any information

10 relating to the nature of the dispute?

11 A. We did not.

12 Q. Did Mr. Broaddus provide any

13 information relating to the nature of the

14 dispute other than what's set forth on this

15 page?

16 A. I don't recall.

17 Q. Do you know if anybody acting on

18 behalf of HCRE ever provided any information to

19 BV relating to the nature of the dispute, other

20 than what's set forth in this e-mail?

21 A. No.

22 Q. You don't recall that; is that fair?

23 A. That's fair.

24 Q. And as you sit here today, you don't

25 have the ability to -- withdrawn. I don't -- I

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1 BARKER VIGGATO LLP - M. BARKER

2 A. Yes, that's fair.

3 MR. MORRIS: Okay. Scroll up.

4 BY MR. MORRIS:

5 Q. And then Mr. Rios responds with

6 another response that's administrative in

7 nature; is that fair?

8 A. Yes.

9 Q. And then the next day you respond and

10 you ask to see if the statement is ready; is

11 that fair?

12 A. Yes.

13 Q. And then the next page is the

14 statement.

15 A. Correct.

16 Q. Okay. And he says in his e-mail on

17 September 14th, "Statement as discussed." Do

18 you see that?

19 A. Uh-huh.

20 Q. Do you have -- is that a yes?

21 A. Yes.

22 Q. Do you have any recollection of

23 having discussed this statement with

24 Mr. Broaddus before receiving this e-mail?

25 A. You know what, I believe that we did.

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1 BARKER VIGGATO LLP - M. BARKER

2 didn't mean for that to come off pejoratively.

3 As you sit here today, you don't have

4 knowledge about the nature of the dispute

5 between HCMLP and HCRE; is that fair?

6 A. No, I don't know what the underlying

7 cause, nature, you know, of this dispute is.

8 Q. Okay. And what, if anything, did BV

9 do with the statement that Mr. Broaddus gave to

10 BV?

11 A. Well, we obviously replicated that

12 statement basically word for word, and we made

13 it a disclosure as part of the 2020 tax return

14 filing.

15 Q. And you did so at the direction of

16 HCRE; is that fair?

17 A. Yes.

18 Q. And BV didn't do any diligence into

19 the disclosure that's being made, correct?

20 A. Correct.

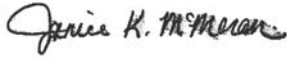
21 Q. And BV doesn't take a position as to

22 the accuracy of the information that's in the

23 disclosure; is that fair?

24 A. That's fair.

25 Q. Did BV ever attempt to speak with

<p style="text-align: right;">Page 106</p> <p>1 BARKER VIGGATO LLP - M. BARKER</p> <p>2 anybody who was acting on behalf of HCMLP</p> <p>3 concerning this statement?</p> <p>4 A. No.</p> <p>5 MR. MORRIS: All right. Let's take a</p> <p>6 short break. It's 12:56. Why don't we</p> <p>7 come back at 1:05, so nine minutes. I may</p> <p>8 be done, sir. I just want to check my</p> <p>9 notes.</p> <p>10 THE WITNESS: Okay. All right.</p> <p>11 MR. MORRIS: Thank you.</p> <p>12 (Recess taken 11:56 a.m. CST - 12:06</p> <p>13 p.m. CST.)</p> <p>14 MR. MORRIS: I have no further</p> <p>15 questions, sir. Thank you so much for</p> <p>16 your time. Greatly appreciated.</p> <p>17 THE WITNESS: You're welcome. So I</p> <p>18 guess we're done, right?</p> <p>19 MR. GAMEROS: No questions for you,</p> <p>20 Mr. Barker. Thank you.</p> <p>21 THE WITNESS: You're welcome.</p> <p>22 MR. MORRIS: All right. Thanks</p> <p>23 again, sir. I really do appreciate it.</p> <p>24 Have a great weekend.</p> <p>25 THE WITNESS: Thanks. You too.</p>	<p style="text-align: right;">Page 107</p> <p>1 BARKER VIGGATO LLP - M. BARKER</p> <p>2 THE REPORTER: Mr. Roberts, would you</p> <p>3 like your client to read and sign?</p> <p>4 MR. ROBERTS: Yeah. Are you going to</p> <p>5 send that to us by e-mail?</p> <p>6 THE REPORTER: Yes, if you could just</p> <p>7 give me your e-mail address.</p> <p>8 MR. ROBERTS: mroberts@</p> <p>9 freemanlaw.com.</p> <p>10 THE REPORTER: Okay. And,</p> <p>11 Mr. Gameros, did you need a copy of this</p> <p>12 one as well?</p> <p>13 MR. GAMEROS: We'll get it expedited,</p> <p>14 please. Yeah, I don't need the exhibits</p> <p>15 on this one.</p> <p>16 THE REPORTER: Okay. I'm sorry, you</p> <p>17 did want expedited.</p> <p>18 MR. GAMEROS: I want it expedited,</p> <p>19 yes.</p> <p>20 (Time noted: 12:06 p.m. CST.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 108</p> <p>1</p> <p>2 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>3 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>4 DALLAS DIVISION</p> <p>5 IN RE: )</p> <p>6 ) CHAPTER 11</p> <p>7 HIGHLAND CAPITAL )</p> <p>8 MANAGEMENT, L.P., ) CASE NO. 19-34054-SGJ11</p> <p>9 )</p> <p>10 Reorganized Debtor. )</p> <p>11</p> <p>12 REPORTER'S CERTIFICATION</p> <p>13 BARKER VIGGATO LLP</p> <p>14 BY AND THROUGH ITS DESIGNATED REPRESENTATIVE</p> <p>15 MARK BARKER</p> <p>16 AUGUST 5, 2022</p> <p>17</p> <p>18 I, Janice K. McMoran, RDR, CRR, TCCR,</p> <p>19 and Certified Shorthand Reporter in and for the</p> <p>20 State of Texas, hereby certify to the following:</p> <p>21 That the witness, BARKER VIGGATO LLP, BY</p> <p>22 AND THROUGH ITS DESIGNATED REPRESENTATIVE MARK</p> <p>23 BARKER, was duly remotely sworn by the officer, and</p> <p>24 that the transcript of the oral deposition is a</p> <p>25 true record of the testimony given by the witness;</p> <p>I further certify that pursuant to</p> <p>Federal Rules of Civil Procedure, Rule 30(e) (1) (A)</p>	<p style="text-align: right;">Page 109</p> <p>1</p> <p>2 and (B) as well as Rule 30(e) (2), that review of</p> <p>3 the transcript and signature of the deponent:</p> <p>4 <u> X </u> was requested by the deponent or</p> <p>5 a party before the completion of the deposition and</p> <p>6 is to be returned within 30 days from date of</p> <p>7 receipt of the transcript if returned, the</p> <p>8 attached Errata contains any changes and the</p> <p>9 reasons therefor;</p> <p>10 _____ was not requested by the deponent</p> <p>11 or a party before the completion of the deposition.</p> <p>12 I further certify that I am neither</p> <p>13 counsel for, related to, nor employed by any of the</p> <p>14 parties or attorneys to the action in which this</p> <p>15 proceeding was taken. Further, I am not a</p> <p>16 relative or employee of any attorney of record in</p> <p>17 this cause, nor am I financially or otherwise</p> <p>18 interested in the outcome of the action.</p> <p>19 Subscribed and sworn to on this the 5th</p> <p>20 day of August, 2022.</p> <p>21 </p> <p>22</p> <p>23 JANICE K. MCMORAN, RDR, CRR, TCRR</p> <p>24 Texas CSR #1959</p> <p>25 Expiration Date: 2/28/23</p>